

FILED

O'Clock

M

SEP 20 2010

JEANNE HICKS, Clerk

BY Deputy

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF YAVAPAI

DIVISION PRO TEM B

HON. WARREN R. DARROW

By: Diane Troxell, Judicial Assistant

CASE NUMBER: V1300CR201080049

Date: September 20, 2010

TITLE:

COUNSEL:

STATE OF ARIZONA

Sheila Sullivan Polk  
Yavapai County Attorney  
Bill Hughes, Esq.  
Steven Sisneros, Esq.  
Deputy Yavapai County Attorneys

(Plaintiff)

(For Plaintiff)

vs.

JAMES ARTHUR RAY

Thomas K. Kelly, Esq.  
425 E. Gurley  
Prescott, AZ 86301

Luis Li, Esq.  
Brad Brian, Esq.  
Truc Do, Attorney at Law  
MUNGER TOLLES & OLSON LLP  
355 S. Grand Avenue, 35<sup>th</sup> Fl.  
Los Angeles, CA 90071

(Defendant)

(For Defendant)

**UNDER ADVISEMENT RULING ON MOTION TO COMPEL DISCLOSURE OF ALL  
INFORMATION AND MATERIAL REGARDING THE MEDICAL EXAMINERS' OPINIONS  
ON CAUSE OF DEATH**

The Court has considered the Defendant's Motion to Compel Disclosure of All Information and Material Regarding the Medical Examiners' Opinions on Cause of Death, the Defendant's Request for Sanctions Against the State for Asserting Work Product Claim and Instructing Witnesses in Bad Faith Not to Answer Questions, State's responses to these motions, the replies, the Declaration of Truc T. Do in support of the motions, and the arguments of counsel.

Whether some or all of the information presented to the medical examiners at the December, 2009, meeting may be labeled as a type of "work product" is not the pivotal question presented by the Defendant's motion to compel and request for sanctions. The crucial and undisputed fact is that at the December meeting information was presented to the medical examiners. Regardless of whether the medical examiners ultimately relied on information provided at that meeting in formulating their opinions on the cause and manner of death, presumably these independent, expert witnesses considered the information. Thus, for the reasons summarized in *State v. Roque*, 213 Ariz. 193, 206-10, 141 P.3d 368, 381-85 (2006), a case cited by the Defendant, the information must be disclosed by the State. As the meeting among the prosecutors, law enforcement representatives, and the expert witnesses apparently

AFTER 12:00PM  
SEP 20 2010

was not recorded, the State must disclose any and all notes, regardless of the organizational affiliation of the author, summarizing the medical examiners' oral communications at the meeting. Rules 15.1(b)(4) and 15.4(a) of the Arizona Rules of Criminal Procedure; *State v. Reid*, 114 Ariz. 16, 30, 559 P.2d 136, 150 (1976).

The Court also concludes that the Defendant has complied with Rule 15.7(b) and that the imposition of monetary sanctions in accordance with Rule 15.7(a) is appropriate. Hearing and oral argument regarding costs incurred by the defense in connection with the prosecution of the motion to compel and the re-interviewing of certain witnesses will be scheduled upon request of either party.

For the reasons set forth above,

IT IS ORDERED **granting** the Defendant's motion to compel and request for sanctions and directing that the State provide the disclosure itemized on page 16 of the Defendant's Memorandum of Points and Authorities in support of the motion to compel and request for sanctions.

DATED this 20<sup>th</sup> day of September, 2010.

  
**Warren R. Darrow**  
**Superior Court Judge**

cc: Victim Services Division